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15 SPRINT/UNITED MANAGEMENT COMPANY,
SPRINT SPECTRUM L.P. and SPRINT SOLUTIONS, INC.

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 MOSES A. ESQUIVEL, individually and on
behalf of all other similarly situated,

20 Plaintiff,

21 v.

22 SPRINT/UNITED MANAGEMENT
COMPANY and DOES 1-10, inclusive,

24 Defendants.

Case No. 3:15-CV-03022-LB

25 **STIPULATION AND [PROPOSED] ORDER
GRANTING REQUEST FOR DISMISSAL OF
PLAINTIFF'S FIRST AMENDED
COMPLAINT WITHOUT PREJUDICE**

26 Hon. Laurel Beeler
Courtroom C, 15th Floor

27 Compl. Filed: April 23, 2015
First Am. Compl. Filed: May 27, 2015
Cross-Compl. Filed: June 26, 2015

28 Trial Date: N/A

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff
3 MOSES A. ESQUIVEL (“Plaintiff”), on the one hand, and Defendant and Cross-Complainant
4 SPRINT/UNITED MANAGEMENT COMPANY, Cross-Complainant SPRINT SPECTRUM L.P.,
5 and Cross-Complainant SPRINT SOLUTIONS, INC. (referred to together as “Sprint”), on other hand
6 (collectively, the “Parties”), respectfully submit this Stipulation and Proposed Order Granting Request
7 for Dismissal of Plaintiff’s First Amended Complaint, Without Prejudice.

8 WHEREAS, Plaintiff filed a Complaint against Sprint/United Management Company on April
9 23, 2015 in the California Superior Court for the County of Marin;

10 WHEREAS, Plaintiff filed a First Amended Complaint against Sprint/United Management
11 Company on May 27, 2015 in the California Superior Court for the County of Marin;

12 WHEREAS, Sprint removed this action to this Court on June 29, 2015;

13 WHEREAS, Plaintiff’s First Amended Complaint asserts an individual cause of action for
14 retaliation as well as class and representative claims for alleged violations of California’s wage and
15 hour laws by Sprint/United Management Company;

16 WHEREAS, Plaintiff’s class action and representative action are at the early stage of litigation
17 and the Parties have not commenced discovery or taken any depositions;

18 WHEREAS, after filing his First Amended Complaint, Plaintiff discovered the existence of
19 two other wage and hour class actions filed against Sprint/United Management Company: (1) *Olivia
Guilbaud, et al. v. Sprint Nextel Corporation and Sprint/United Management Co., Inc.* (“Guilbaud”)
20 (pending in the United States District Court, Northern District of California, Case No. 3:13-cv-04357-
21 VC, filed on September 19, 2013), and (2) *Viet Bui v. Sprint Corporation, a Sprint Communications
Company, L.P., Sprint/United Management Co.* (“Bui”) (pending in the United States District Court,
22 Eastern District of California,, Case No. 2:14-cv-02461-TLN-AC, filed on July 10, 2014);

23 WHEREAS, the wage and hour claims alleged by Plaintiff in this action, including Plaintiff’s
24 representative claim for penalties under the Labor Code Private Attorneys General Act of 2004
25 (“PAGA”), are encompassed by *Bui* and/or *Guilbaud*;

1 WHEREAS, the class that Plaintiff seeks to represent in this action is encompassed by the
2 putative classes in *Bui* and/or *Guilbaud*;

3 WHEREAS, the *Bui* case is currently awaiting preliminary approval of a class action
4 settlement;

5 WHEREAS, the Parties wish to dismiss Plaintiff's First Amended Complaint (including
6 Plaintiff's individual, class, and representative wage and hour claims therein) without prejudice in
7 light of the *Bui* settlement;

8 WHEREAS, no harm will result to the class from a dismissal of Plaintiff's class and
9 representative claims without prejudice because Plaintiff's case has not been certified as a class;

10 WHEREAS, Plaintiff also desires to dismiss his individual cause of action against
11 Sprint/United Management Company for retaliation under California Labor Code Section 1102.5
12 without prejudice;

13 WHEREAS, the Parties acknowledge the existence of a pending Cross-Complaint and that
14 neither the undersigned counsel nor any of the attorneys who have appeared on Plaintiff's behalf in
15 connection with Plaintiff's First Amended Complaint represents Plaintiff in connection with the
16 Cross-Complaint; and

17 WHEREAS, Plaintiff has been advised that he is not currently represented by counsel in
18 connection with the Cross-Complaint filed against him by Sprint, and has been encouraged to retain
19 counsel in connection with said Cross-Complaint;

20 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the Parties that:
21 Plaintiff's First Amended Complaint (including, without limitation, any and all individual, class
22 action, and representative claims alleged therein) will be dismissed in its entirety without prejudice.

23 **IT IS SO STIPULATED.**

1 Dated: September 11, 2015

PROSKAUER ROSE LLP
Harold M. Brody
Enzo Der Boghossian
Anthony J. DiBenedetto
Keith A. Goodwin

4 By: /s/ Keith A. Goodwin
5 Keith A. Goodwin

6 Attorneys for Defendant and Cross-Complainants,
7 SPRINT/UNITED MANAGEMENT COMPANY,
8 SPRINT SPECTRUM L.P. and SPRINT SOLUTIONS, INC.

9
10 Dated: September 11, 2015

WESTRUP & ASSOCIATES
R. Duane Westrup

11 By: /s/ R. Duane Westrup
12 R. Duane Westrup

13 Attorneys for Plaintiff,
14 MOSES A. ESQUIVEL

SIGNATURE ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this document's content and have authorized the filing of this document with the use of their electronic signature.

Dated: September 11, 2015

WESTRUP & ASSOCIATES
R. Duane Westrup

By: _____ /s/ R. Duane Westrup
R. Duane Westrup

Attorneys for Plaintiff, MOSES A. ESQUIVEL

1 **[PROPOSED] ORDER**

2 Pursuant to the Stipulation between Plaintiff MOSES A. ESQUIVEL (“Plaintiff”), on the one
3 hand, and Defendant and Cross-Complainant SPRINT/UNITED MANAGEMENT COMPANY,
4 Cross-Complainant SPRINT SPECTRUM L.P., and Cross-Complainant SPRINT SOLUTIONS, INC.
5 (referred to together as “Sprint”), on other hand (collectively, the “Parties”), and good cause appearing
6 therefor, IT IS HEREBY ORDERED that Plaintiff’s First Amended Complaint (including, without
7 limitation, any and all individual claims, class action claims, and representative claims under the
8 California Labor Code Private Attorneys General Act of 2004 (“PAGA”) alleged therein) is HEREBY
9 DISMISSED in its entirety without prejudice to Plaintiff or to any putative class member.

10 **IT IS SO ORDERED.**

11 Dated: 9/14/2015

12 
13 _____
14 Honorable Laurel Beeler
15 United States Magistrate Judge